

IN THE COURT OF APPEALS OF IOWA

FILED

JUN 26 1984

CLERK SUPREME COURT

**KRISHNA A. BIRUSINGH and
PATRICIA BIRUSINGH,**

Plaintiffs-Appellees,

vs.

**ROBERT W. KNOX, Chairman,
BOARD OF REVIEW OF
POTTAWATTAMIE COUNTY, IOWA,**

Defendants-Appellants.

Filed June 26, 1984

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Appeal from the Iowa District Court for Pottawattamie County, Paul H. Sulhoff, Judge.

The defendants appeal from the district court's decision to reduce defendant Board of Review's assessment on plaintiffs' property. **AFFIRMED.**

Frank Pechacek and Randy R. Ewing of Smith, Peterson, Beckman & Willson, Council Bluffs, for defendants-appellants.

Raymond E. Pogge of Pogge, Root & Steege, Council Bluffs, for plaintiffs-appellees.

Heard by Oxberger, C.J., and Schlegel, and Hayden, JJ.

The defendants appeal from the district court's decision to reduce the assessment on plaintiffs' property. We affirm.

The plaintiffs protested to the defendant Board of Review the January 1, 1981, assessment of their property. The total assessed valuation placed by the assessor on the property was \$185,832. The plaintiffs' grounds for protest were that the assessment was not equitable as compared with assessments of other like property in the county, that the property was assessed for more than the value authorized by law, and that there had been a downward change in the value of the property since the last assessment. The defendant Board denied the protest. The district court, however, found that plaintiffs sustained their burden of proof that the fair and reasonable market value of tax property was \$125,000.

When a property owner appeals an assessment from the Board of Review, the district court hears the appeal in equity and determines anew the issues relating to such assessment that were raised before the Board. The court shall consider all the evidence and there shall be no presumption as to the correctness of valuation of assessment appealed from. Our review of the district court's decision is de novo. Dowden v. Dickinson Co., Iowa, Bd. of Review, 338 N.W.2d 719, 720-21 (Iowa Ct. App. 1983).

I. Burden of Proof

The defendant Board claims that the Birusinghs failed to offer competent evidence by at least two disinterested witnesses that the market value of their property was less than the market value determined by the assessor. Iowa Code section 441.21(3) states in part:

The burden of proof shall be upon any complainant attacking such valuation as excessive, inadequate, inequitable or capricious; however, in protest or appeal proceedings when the complainant offers competent evidence by at least two disinterested witnesses that the market value of the property is less than the market value determined by the assessor, the burden of proof thereafter shall be upon the officials or persons seeking to uphold such valuation to be assessed.

Other than Mrs. Birusingh's testimony, the plaintiffs presented three witnesses who testified to the market value of the subject property. Each witness arrived at a value for the property that was less than the market value as determined by the assessor. Each witness was a licensed real estate broker and an appraiser. There is no question but that the witnesses were disinterested. The fighting issue here then is whether the evidence offered was sufficiently competent to warrant shifting the burden of proof to defendant Board to show that the valuation was reasonable and proper. See Valley Forge Apts. v. Board of Review, 239 N.W.2d 148, 150 (Iowa 1976). We find it was not.

In arriving at a valuation figure, the assessor is to determine the market value of the property. We stated in Dowden v. Dickinson Co., Iowa, Bd. of Review, 338 N.W.2d 719 (Iowa Ct. App. 1983):

Market value is to be determined by the sales price of the property to be assessed or of comparable property in regular transactions, adjusted for factors which distort such value "including but not limited to sales to immediate family of the seller, foreclosure or other forced sales, contract sales, discounted purchase transactions or purchase of adjoining land or other land to be operated as a unit."

When this "sales price" method of valuation cannot be used, then the assessor is to consider other factors such as the property's productive and earning capacity, its cost, physical and functional depreciation and obsolescence and replacement cost. The assessment, however, is not to be based on only one of those other factors.

Id. at 722.

When the property in question was assessed, all the experts agreed that there were no comparable properties within the Council Bluffs area. As such, the market value approach could not be used.

Plaintiffs' first expert, Smith, testified that he used the cost or replacement approach, less depreciation, to make his valuation. Under this method it was his opinion that the house and seven acres should be valued at \$109,040. He valued the other twenty-nine acres at \$400 an acre, or \$11,600—the total value being \$120,640.

John Pogge, plaintiffs' second witness, testified on the basis of his inspection of the house. He stated that the quality of material in the house and the construction of the house was average to poor. It was his opinion that the fair and reasonable value of both the house and land was \$125,000. Pogge, as Smith, opined that there were no comparable properties.

A third expert, Ernest Jensen, testified that he inspected the property for about one hour and fifteen minutes. He believed the quality of construction as well as the materials used to be mediocre. He too agreed that there were no comparable properties. His opinion, based upon his inspection, was that the entire property should be valued at \$125,000.

We have recently said that actual value is not to be determined on the basis of one factor or one valuation method alone. Dowden at 723. It is clear from the evidence that Smith relied solely on the replacement method in reaching his final valuation. The evidence does not indicate which method Pogge and Nelsen relied upon. Under these circumstances, we agree with defendant Board and find that plaintiffs did not offer competent evidence from two disinterested witnesses such that the burden of upholding the assessments shifted to the Board. See id.; Iowa Code § 441.21(3). Accordingly, the burden remains with the Birusinghs to prove that the assessment of their real estate was excessive. See Bartlett v. Co. Grain v. Bd. of Review, 253 N.W.2d 86, 88 (Iowa 1977).

We believe the Birusinghs have met their burden. Even though plaintiffs' expert evidence was not competent within the meaning of section 441.21(3) to enable the burden to be shifted to the Board, we find the plaintiffs' evidence when viewed in its entirety is more credible than defendant Board's evidence.

Mr. Hastings, the county assessor, testified that the assessed value of the property was \$185,832. Ms. Mitchell, the deputy assessor and defendant's expert, stated that she worked on the assessment of the subject property. She testified

that the cost approach was used. Basically, she sent two appraisers out to bring information concerning the property to her office. The three of them then used the Iowa State Manual to arrive at the value of the property. The total assessed value of the property was computed by Ms. Mitchell as follows: house, \$168,472; older house on property, \$8,659; outbuildings, \$1,747; and land, \$6,954, for a total of \$185,832. The agricultural land value was assessed with an income approach as is required by statute. Ms. Mitchell testified that she arrived at the valuation by strictly taking the square footage and applying it to the manual.

Mr. Groves, a real estate appraiser in Omaha, also testified on behalf of the Board. Using the reproduction cost approach, he valued the property at \$226,178. He also stated that he used comparable sales of properties within the Omaha area to make another valuation. By using that market approach, he valued the house at \$238,073. Mr. Groves indicated that he has not sold real estate for fifteen or twenty years; he has not handled sales in the Council Bluffs area for that period of time. Part of his opinion was based upon the conversations and experiences of other contractors. (See Ipsen v. Ruess, 239 Iowa 1376, 1388, 35 N.W.2d 82, 91 (Iowa 1949) for the proposition that an expert witness cannot base his opinion in whole or in part upon opinions of others). Furthermore, the comparables that Groves used were not in the Council Bluffs area.

Mrs. Birusingh testified in her own behalf. She stated that the house was built between 1975 and 1977 for \$85,000; she also testified that they paid \$450 an acre for the farmland. Other evidence indicates the driveway leading to the house is dirt and sand, the property has no landscaping and none of the roads in the area are paved. Furthermore, there is no expensive woodwork in the house, the outside of the house is rough siding with imitation rock, and the double garage can only be used for one small car because there is a furnace in the other half.

We have considered Mrs. Birusingh's testimony along with that of plaintiffs' experts and find it is more probable that the property in question is of a lower quality than what was ascertained by the assessor. Plaintiffs' experts have had many years of experience in real estate sales and appraisals in the Council Bluffs area. We find that the actual value placed upon the property by those experts is a fair and reasonable market value figure. Accordingly, we affirm the district court's ruling concluding that the actual fair market value of the property as of January 1, 1981, was \$125,000; we find plaintiffs have met their burden of proving the valuation placed upon their property to be excessive.

We need not reach appellants' other issues.

AFFIRMED.